IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

BOBBY D.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, L.K., N.C., C.D., AND B.D.,
Appellees.

No. 2 CA-JV 2015-0027
Filed June 23, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD190257
The Honorable Lisa I. Abrams, Judge

AFFIRMED

COUNSEL

David K. Kovalik PLLC, Tucson
By David K. Kovalik
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Bobby D. appeals from the juvenile court's denial of his motion to become the placement of his legally dependent grandchildren, N.C., C.D., and B.D., and their half-sibling, L.K., born in 2003, 2005, 2006, and 2002, respectively.[1] Because the record supports the court's ruling denying Bobby's motion for placement, we affirm.

¶2 In 2009, the Department of Child Safety (DCS)[2] removed the children from the family home, after which they were adjudicated dependent and were placed in a foster home where they have remained except for the brief time between the first and second dependency proceedings, when they were returned to the parents. Bobby filed a motion to intervene in July 2014, which the juvenile court granted. L.K.'s father's parental rights were severed in August 2014. Bobby then filed a motion for placement in November 2014,

[1] Although Bobby is the biological, paternal grandfather of only N.C., C.D., and B.D., he is appealing from the juvenile court's denial of his motion for placement as to all four children, who share the same biological mother. In its severance ruling as to the mother and father of N.C., C.D., and B.D, the juvenile court noted, "[T]he parents do not distinguish between the parentages of the children. The parents regularly refer to the four children as 'the children' without distinguishing the fact that [L.K.] has a different father." The children did not file an answering brief on appeal.

[2] The Department of Child Safety is substituted for the Arizona Department of Economic Security in this decision. *See* 2014 Ariz. Sess. Laws, 2d Spec. Sess., ch. 1, § 20.

which the court denied in January 2015, shortly after it severed the children's mother's parental rights and those of N.C., C.D., and B.D.'s father. This appeal followed. *See Lindsey M. v. Ariz. Dep't of Econ. Sec.*, 212 Ariz. 43, ¶ 9, 127 P.3d 59, 61-62 (App. 2006) (order ratifying or changing child's placement during dependency is final and appealable order).

¶3 Pursuant to A.R.S. § 8-845(A)(2), a juvenile court may award a dependent child to the custody of a grandparent or other relative "unless the court has determined that such placement is not in the child's best interests." The court has broad discretion in determining the proper placement of a dependent child, *Antonio P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 402, ¶ 8, 187 P.3d 1115, 1117 (App. 2008), and its primary consideration must always be the child's best interest. *See* § 8-845(B) (child's health and safety of paramount concern); *Antonio P.*, 218 Ariz. 402, ¶ 8, 187 P.3d at 1117. We review a court's placement decision only for an abuse of discretion. *Antonio P.*, 218 Ariz. 402, ¶ 8, 187 P.3d at 1117.

¶4 Section 8-514(B), A.R.S., provides that "[t]he department shall place a child in the least restrictive type of placement available, consistent with the needs of the child," and sets forth an order for placement listing a "grandparent" in second position and a "licensed family foster care" in fourth position. As we determined in *Antonio P.*, however, § 8-514(B) "clearly states that the order of placement is a preference, not a mandate." 218 Ariz. 402, ¶ 12, 187 P.3d at 1118. The statute "provides the juvenile court with the legislature's preference for where or with whom a child is placed but it does not mandate that the order of preference be strictly followed when a placement is not consistent with the needs of the child," and instead "requires only that the court include placement preference in its analysis of what is in the child's best interest." *Id.*

¶5 On appeal, Bobby argues the juvenile court abused its discretion by denying his motion in the absence of evidence showing placement with him was *not* in the children's best interest. He asserts that § 8-514(B) requires placement with a grandparent over a foster family, and maintains that, unlike *Antonio P.*, 218 Ariz. 402, ¶ 1, 187 P.3d at 1116, in which the issue was whether the child

should be placed with one family member or another, the court here placed the children with a non-family member rather than a family member. Bobby also argues the court erred in concluding placement with him was "potentially fraught with unknowns," and further maintains that the court's ruling "effectively killed any chance" of his maintaining future contact with the children.

¶6 At the hearing on Bobby's motion, DCS case worker Larissa Ortiz opined the children should remain with their current foster family placement for the following reasons: Bobby had failed to pass the background check to become the children's placement; the children have been with the same foster family, which is willing to adopt them, for the entire dependency; the children enjoy the school they attend and are involved in local activities; Bobby lives "outside of Tucson" in Sonoita, which would impact the children's routine; the foster parents have the necessary training to address the children's special needs, including the trauma L.K. experienced as a result of having been sexually abused by Bobby's son (the father of N.C., C.D., and B.D.); it is unclear if Bobby will be able to protect the children from the parents, most specifically from Bobby's son; and finally, "as of right now there's nobody else who has come forward and passed the background check." Ortiz further testified she is familiar with the statutory preference to place children with family members, which is also DCS's policy. And she acknowledged that the current placement is not a family member and that the children had expressed a desire to live with Bobby.

¶7 Bobby testified about his criminal history, which included charges of domestic violence, transportation of drugs, assault, and driving under the influence of an intoxicant. And although he testified he would be able to meet the children's needs, he acknowledged he had no "information" about the behaviors they had been exhibiting or "about their counseling and stuff." He further testified he had not seen the children in more than two years; he believed his son posed a danger to the children; and, he wanted to adopt the children. In closing argument, Bobby's attorney requested that the juvenile court order "a transition, to place the children with [Bobby] down the road and to get him in a position to satisfy all of the concerns that were raised."

¶8 Without objection, the juvenile court granted DCS's request that it take judicial notice of its best interest findings from the termination proceeding a few weeks earlier. In its ruling at the hearing, the court provided a detailed and accurate recitation of the history of the case. Relying on *Antonio P.*, 218 Ariz. 402, ¶ 1, 187 P.3d at 1116, for the statutory preference for kinship placement under § 8-514(B)(3), the court noted "[n]otwithstanding any preference that might exist, the preferences are not mandatory" and that "a child's best interests is of paramount importance." In denying Bobby's motion for placement, the court stated it was "empathetic" to his position and encouraged him to maintain contact with the children in order to "provide them with some really wonderful positive familial support which they so desperately require," albeit "in the context of their current stable home."

¶9 The juvenile court also noted it had considered the following factors before denying Bobby's motion: the bond between the children and the current placement, which the children consider to be "a safe zone"; the placement's ability "to address the children's unique sibling bonds and their therapeutic and educational needs," which it had been doing "for the greater part of the last five years"; the importance of consistency in the children's support system, school, friends, and activities; the disruption the children would experience if forced to move from their current residence in Oro Valley to Sonoita; the risk of contact with the mother or father in Bobby's home; and the fact that placement with Bobby "is potentially fraught with unknowns and with these children at this time the last thing [they] need are unknowns."

¶10 To the extent Bobby suggests the juvenile court was required to find that placing the children with him was *not* in their best interest, as we concluded in *Antonio P.*, 218 Ariz. 402, ¶ 12, 187 P.3d at 1118, "the court is not obligated to find that a placement with a grandparent is *not* in the child's best interest before placing the child with an aunt . . . . The statute requires only that the court include placement preference in its analysis of what is in the child's best interest." And, although this case does not involve competing interests between relatives as in *Antonio P.*, we nonetheless conclude

that the court's careful consideration of the statutory preference for placement in making its best interest determination satisfied the statute's requirements.

¶11 Additionally, to the extent Bobby asserts the court should not have considered the "unknown" aspect of placing the children with him, we disagree. As part of the court's best interest determination, it properly considered the potential impact on the children arising from a break in their routine and placement in a new and "unknown" environment. We similarly reject Bobby's assertion that the court's ruling necessarily "killed" any chance of maintaining contact with the children. This argument is speculative and unsupported by the record, and in any event, it is not dispositive of the issue before us—whether the court abused its discretion.

¶12 Moreover, by reasserting the facts he believes establish his fitness to have the children placed with him and by arguing the juvenile court assigned either too much or too little weight to certain factors, Bobby is asking us to invade the province of the court by finding facts and reweighing evidence. This we will not do. "[Resolving] conflicts in the evidence is uniquely the province of the juvenile court as the trier of fact; we do not re-weigh the evidence on review." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002); *see also Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 16, 107 P.3d 923, 928 (App. 2005) (reweighing evidence not function of appellate court, which determines only whether substantial evidence supports ruling). Because the record contains substantial evidence to support the court's best-interest determination, we are unable to say it abused its discretion in denying Bobby's motion for placement. *Lashonda M.*, 210 Ariz. 77, ¶ 16, 107 P.3d at 928.

¶13 For all of these reasons, the juvenile court's ruling is affirmed.